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## Foreword

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# FOREWORD

BY JUDGE OLIVER SETH

As part of the publication of the second annual *Tenth Circuit Survey*, the writers of the opinions so surveyed would like to formally commend the *Denver Law Journal* for undertaking this difficult task. We would also like to state that, in our view, the first survey was prepared in a professional and scholarly manner. It contained a sound analysis of a large quantity of diverse material; thus, we have been looking forward to this publication.

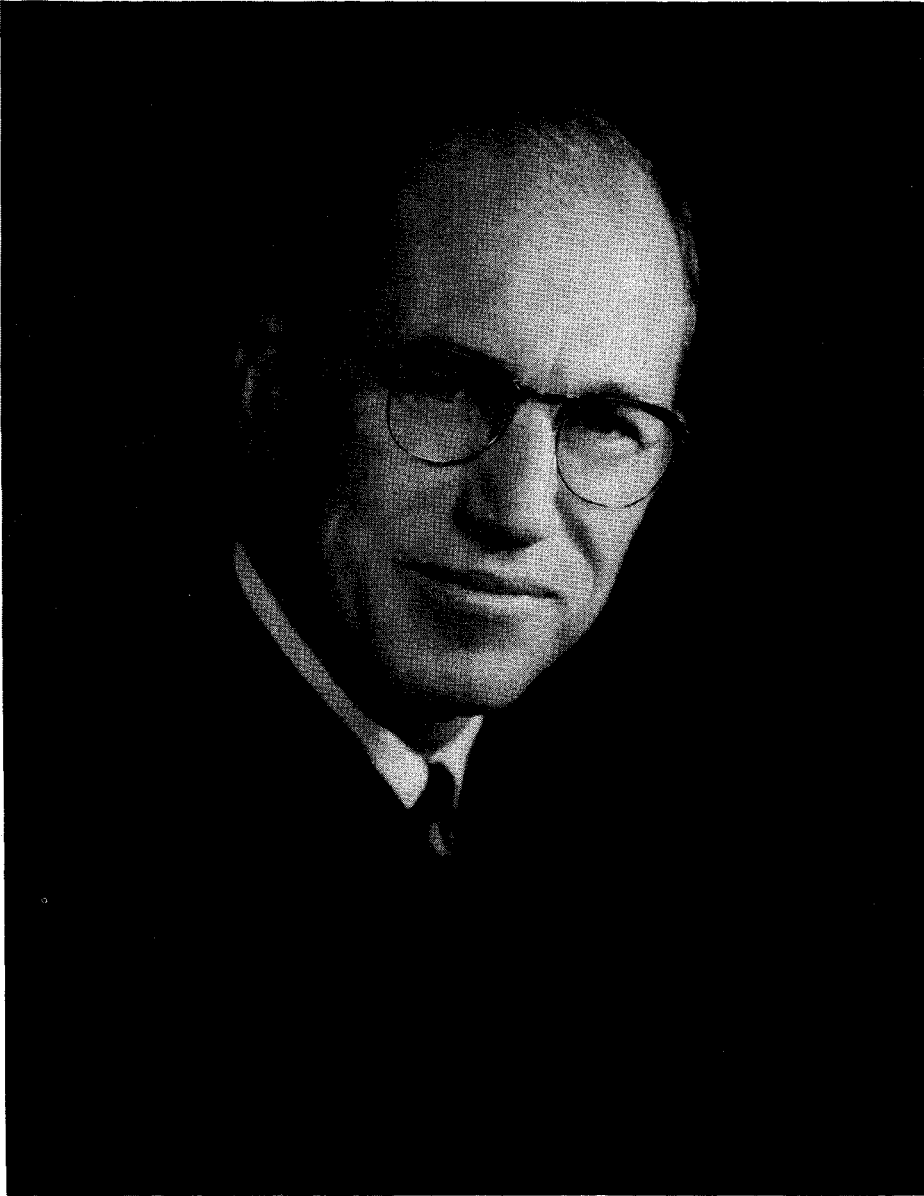
Judge Lewis in the foreword to the first survey well described the position of this court in the hierarchy of courts. The relationship of our court with the other federal and state courts in the analysis of decisions is well structured, but I often wonder whether the opinions of this court during the past year are as firmly fixed in relation to the litigants, the participating attorneys, and the scholars as they used to be. This query is prompted by what appears to be the direction in which many of the opinions of our court are now pointed. I am referring to the typical published opinion in the civil and criminal cases which are argued before panels of the court. These opinions are now for the most part directed to, and written primarily as an explanation to, the litigant and his attorney of the legal-decisional basis or reason for the result reached by the panel. Therefore, in view of the press of cases, they cannot be written for posterity or for law reviews; nor can they meet more than basic literary standards, or serve as detailed directions to the trial courts. It has become more important to decide the case as promptly as possible and, also, to provide a written explanation to the litigant as to how the result was reached, rather than to give full expression to the other factors.

Our court strongly feels that the parties and their attorneys are entitled to have an expanded order, a per curiam opinion, or an authored opinion as part of the disposition of their appeal or petition. Thus, this court seeks to write in a greater percentage of the cases than any other circuit. Since the primary aim is to decide promptly and to write a sound explanation, it is not always possible to attain the literary quality desired, nor perhaps to produce an opinion of scholarly appearance. Many of these opinions are not routinely published. A compromise must be reached. This court has thus determined to write on as many cases as possible.

It seems that this description of the basic approach of this court is in order in connection with this second annual survey. This is not an explanation, but it is at least a description of methodology. It must also have added to the burden of those undertaking the survey.

Again, let me on behalf of our court express our admiration to the *Denver Law Journal* for undertaking such a difficult task, which is just as skillfully done as was the first survey.





**JUSTICE BYRON R. WHITE**